

AMENDED IN ASSEMBLY APRIL 18, 2002

AMENDED IN ASSEMBLY APRIL 15, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

## ASSEMBLY BILL

**No. 2289**

**Introduced by Assembly Member Kehoe**

February 21, 2002

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An act to amend Sections 1365, 1366, 1366.3, and 1367 of, and to add Sections 1361.5 and ~~1365.3~~, *1365.3, and 1367.1* to, the Civil Code, relating to common interest developments.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2289, as amended, Kehoe. Common interest developments: assessments: nonjudicial foreclosure.

(1) The Davis-Stirling Common Interest Development Act defines and regulates common interest developments and permits the association that manages the development to levy assessments to fulfill its obligations under the act, but also prohibits certain actions.

This bill would prohibit an association from denying an owner physical access to his or her separate interest, as specified.

(2) Existing law requires an association to prepare and distribute to its members specified documents, including documents related to the association's budget, finances, and policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against ~~it~~ *its* members.

This bill would require an association to include in those statements certain notices, including a notice relating to a nonjudicial foreclosure.

(3) Existing law provides that a regular or special assessment of the association, late charges, reasonable costs of collection, and interest, as specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied, and are a lien on the owner's separate interest when the association records a specified document and follows a specified process. Existing law permits the association to enforce the lien in any manner permitted by law including a sale by a trustee, also known as a nonjudicial foreclosure.

This bill would require that an association that fails to comply with that specified process, prior to placing a lien, recommence the notice process at the expense of the association.

(4) Existing law requires an association to provide notice to its members by first-class mail of any increase in the assessments within a specified timeframe. Existing law permits the association to recover various costs, fees, and interest in collecting a delinquent assessment.

This bill would clarify the timeframe in which notice is required, and the amount of interest the association is permitted to recover, as specified.

(5) Existing law provides a specified process for disputes related to association assessments, including an exception to that process if the owner of the separate interest chooses to pay certain charges and mail a written notice that the amount is paid under protest. Under this exception, the association is required to inform the owner of his or her right to resolve the dispute through alternative dispute resolution.

This bill would require, as a condition for the exception to apply, would require that only reasonable fees and charges be paid, *including reasonable attorney's fees not to exceed \$425*. ~~The bill would also permit the owner to request a hearing to be conducted by the board of directors prior to the filing of any lien.~~

(6) Existing law further requires an association to notify an owner of record of the penalty procedures and provide an itemized statement of charges.

This bill would require, *for liens created on and after January 1, 2003*, that an association, 30 days prior to placing a lien on the separate interest of the owner of record, *to* notify the owner by mail of the association's collection and lien procedures, as specified, and ~~permit an owner to hold of the owner's right to a hearing of before the board of directors to discuss any disputed assessments, charges, or interest, or a payment plan~~ *amounts constituting the owner's debt that are in dispute or delinquent, and any payment plan purposed by the owner. The bill*

would provide that the board is not required to meet with an owner in this regard more than twice in a 2-year period. The bill would provide that if the board agrees to a payment plan, as specified, it may record a lien prior to the implementation of the plan, if the authority for recording the lien is present in the plan. The bill would permit the board to enforce the lien only if the owner fails to comply with the plan.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1361.5 is added to the Civil Code, to  
2 read:

3 1361.5. (a) An association may not deny an owner physical  
4 access to his or her separate interest, either by restricting access  
5 through the common areas to the owner's separate interest, or by  
6 restricting access solely to the owner's separate interest.

7 (b) Access may not be denied, as set forth in subdivision (a),  
8 whether the separate interest is occupied by the owner or a  
9 nonowner.

10 SEC. 2. Section 1365 of the Civil Code is amended to read:

11 1365. Unless the governing documents impose more stringent  
12 standards, the association shall prepare and distribute to all of its  
13 members the following documents:

14 (a) A pro forma operating budget, which shall include all of the  
15 following:

16 (1) The estimated revenue and expenses on an accrual basis.

17 (2) A summary of the association's reserves based upon the  
18 most recent review or study conducted pursuant to Section 1365.5,  
19 which shall be printed in bold type and include all of the following:

20 (A) The current estimated replacement cost, estimated  
21 remaining life, and estimated useful life of each major component.

22 (B) As of the end of the fiscal year for which the study is  
23 prepared:

24 (i) The current estimate of the amount of cash reserves  
25 necessary to repair, replace, restore, or maintain the major  
26 components.

27 (ii) The current amount of accumulated cash reserves actually  
28 set aside to repair, replace, restore, or maintain major components.

1 (iii) If applicable, the amount of funds received from either a  
2 compensatory damage award or settlement to an association from  
3 any person or entity for injuries to property, real or personal,  
4 arising out of any construction or design defects, and the  
5 expenditure or disposition of funds, including the amounts  
6 expended for the direct and indirect costs of repair of construction  
7 or design defects. These amounts shall be reported at the end of the  
8 fiscal year for which the study is prepared as separate line items  
9 under cash reserves pursuant to clause (ii). In lieu of complying  
10 with the requirements set forth in this clause, an association that  
11 is obligated to issue a review of their financial statement pursuant  
12 to subdivision (b) may include in the review a statement containing  
13 all of the information required by this clause.

14 (C) The percentage that the amount determined for purposes of  
15 clause (ii) of subparagraph (B) equals the amount determined for  
16 purposes of clause (i) of subparagraph (B).

17 (3) A statement as to whether the board of directors of the  
18 association has determined or anticipates that the levy of one or  
19 more special assessments will be required to repair, replace, or  
20 restore any major component or to provide adequate reserves  
21 therefor.

22 (4) A general statement addressing the procedures used for the  
23 calculation and establishment of those reserves to defray the future  
24 repair, replacement, or additions to those major components that  
25 the association is obligated to maintain.

26 The summary of the association's reserves disclosed pursuant to  
27 paragraph (2) may not be admissible in evidence to show improper  
28 financial management of an association, provided that other  
29 relevant and competent evidence of the financial condition of the  
30 association is not made inadmissible by this provision.

31 A copy of the operating budget shall be annually distributed not  
32 less than 45 days nor more than 60 days prior to the beginning of  
33 the association's fiscal year.

34 (b) A review of the financial statement of the association shall  
35 be prepared in accordance with generally accepted accounting  
36 principles by a licensee of the California Board of Accountancy for  
37 any fiscal year in which the gross income to the association  
38 exceeds seventy-five thousand dollars (\$75,000). A copy of the  
39 review of the financial statement shall be distributed within 120  
40 days after the close of each fiscal year.



(c) In lieu of the distribution of the pro forma operating budget required by subdivision (a), the board of directors may elect to distribute a summary of the pro forma operating budget to all of its members with a written notice that the pro forma operating budget is available at the business office of the association or at another suitable location within the boundaries of the development, and that copies will be provided upon request and at the expense of the association. If any member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be in at least 10-point boldface type on the front page of the summary of the budget.

(d) (1) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members, as owners of separate interests, shall be annually delivered to the members during the 60-day period immediately preceding the beginning of the association's fiscal year. ~~The~~

(2) *The* statement shall include all of the following:

(A) Notice that failure of an owner to pay assessments may result in the loss of the owner's separate interest without court action.

(B) Notice that the owner of a separate interest may request the association to consider entering into a payment plan to bring delinquent assessments current, prior to filing a notice of lien for delinquent assessments.

(C) Notice of the schedule of any fines or penalties that may be levied by the association, as set forth in the association's governing documents.

(D) Notice that the collection practices of the association's agents are governed by Title 1.6C of the Civil Code and that penalties may be imposed for failure to comply with fair debt collection laws.

(E) Notice that the amounts subject to a nonjudicial foreclosure pursuant to Sections 2924, 2924b, 2924c, and 2924d are limited to assessments, reasonable costs of collection, reasonable attorney's fees, late charges, interest, and, if applicable, utility

1 charges and premiums for insurance, and that the association may  
2 not use a nonjudicial foreclosure to collect fines or penalties.

3 ~~(2)~~

4 (F) Notice of ~~any delinquency~~ *that any delinquent assessment*  
5 *established pursuant to subdivisions (a) and (b) of Section 1367.1*  
6 shall begin with the following statement in 14-point boldface type,  
7 if printed, or in capital letters, if typed: “IMPORTANT NOTICE:  
8 IF YOUR SEPARATE INTEREST IS PLACED IN  
9 FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR  
10 ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT  
11 ACTION.”

12 (e) (1) A summary of the association’s property, general  
13 liability, and earthquake and flood insurance policies, which shall  
14 be distributed within 60 days preceding the beginning of the  
15 association’s fiscal year, that includes all of the following  
16 information about each policy:

17 (A) The name of the insurer.

18 (B) The type of insurance.

19 (C) The policy limits of the insurance.

20 (D) The amount of deductibles, if any.

21 (2) The association shall, as soon as reasonably practicable,  
22 notify its members by first-class mail if any of the policies  
23 described in paragraph (1) have lapsed, been canceled, and are not  
24 immediately renewed, restored, or replaced, or if there is a  
25 significant change, such as a reduction in coverage or limits or an  
26 increase in the deductible, as to any of those policies. If the  
27 association receives any notice of nonrenewal of a policy  
28 described in paragraph (1), the association shall immediately  
29 notify its members if replacement coverage will not be in effect by  
30 the date the existing coverage will lapse.

31 (3) To the extent that any of the information required to be  
32 disclosed pursuant to paragraph (1) is specified in the insurance  
33 policy declaration page, the association may meet its obligation to  
34 disclose that information by making copies of that page and  
35 distributing it to all of its members.

36 (4) The summary distributed pursuant to paragraph (1) shall  
37 contain, in at least 10-point boldface type, the following statement:  
38 “This summary of the association’s policies of insurance provides  
39 only certain information, as required by subdivision (e) of Section  
40 1365 of the Civil Code, and should not be considered a substitute

1 for the complete policy terms and conditions contained in the  
2 actual policies of insurance. Any association member may, upon  
3 request and provision of reasonable notice, review the  
4 association's insurance policies and, upon request and payment of  
5 reasonable duplication charges, obtain copies of those policies.  
6 Although the association maintains the policies of insurance  
7 specified in this summary, the association's policies of insurance  
8 may not cover your property, including personal property or, real  
9 property improvements to or around your dwelling, or personal  
10 injuries or other losses that occur within or around your dwelling.  
11 Even if a loss is covered, you may nevertheless be responsible for  
12 paying all or a portion of any deductible that applies. Association  
13 members should consult with their individual insurance broker or  
14 agent for appropriate additional coverage."

15 SEC. 3. Section 1365.3 is added to the Civil Code, to read:

16 1365.3. (a) An association that fails to comply with the  
17 procedures set forth in subdivision (d) of Sections 1365 and 1367  
18 shall, prior to placing a lien, recommence the notice process  
19 required in subdivision (d) of Section 1365.

20 (b) Any costs associated with recommencing the notice process  
21 shall be borne by the association and not by the owner of a separate  
22 interest.

23 SEC. 4. Section 1366 of the Civil Code is amended to read:

24 1366. (a) Except as provided in this section, the association  
25 shall levy regular and special assessments sufficient to perform its  
26 obligations under the governing documents and this title.  
27 However, annual increases in regular assessments for any fiscal  
28 year, as authorized by subdivision (b), shall not be imposed unless  
29 the board has complied with subdivision (a) of Section 1365 with  
30 respect to that fiscal year, or has obtained the approval of owners,  
31 constituting a quorum, casting a majority of the votes at a meeting  
32 or election of the association conducted in accordance with  
33 Chapter 5 (commencing with Section 7510) of Part 3 of Division  
34 2 of Title 1 of the Corporations Code and Section 7613 of the  
35 Corporations Code. For the purposes of this section, "quorum"  
36 means more than 50 percent of the owners of an association.

37 (b) Notwithstanding more restrictive limitations placed on the  
38 board by the governing documents, the board of directors may not  
39 impose a regular assessment that is more than 20 percent greater  
40 than the regular assessment for the association's preceding fiscal



1 year or impose special assessments which in the aggregate exceed  
2 5 percent of the budgeted gross expenses of the association for that  
3 fiscal year without the approval of owners, constituting a quorum,  
4 casting a majority of the votes at a meeting or election of the  
5 association conducted in accordance with Chapter 5 (commencing  
6 with Section 7510) of Part 3 of Division 2 of Title 1 of the  
7 Corporations Code and Section 7613 of the Corporations Code.  
8 For the purposes of this section, quorum means more than 50  
9 percent of the owners of an association. This section does not limit  
10 assessment increases necessary for emergency situations. For  
11 purposes of this section, an emergency situation is any one of the  
12 following:

13 (1) An extraordinary expense required by an order of a court.

14 (2) An extraordinary expense necessary to repair or maintain  
15 the common interest development or any part of it for which the  
16 association is responsible where a threat to personal safety on the  
17 property is discovered.

18 (3) An extraordinary expense necessary to repair or maintain  
19 the common interest development or any part of it for which the  
20 association is responsible that could not have been reasonably  
21 foreseen by the board in preparing and distributing the pro forma  
22 operating budget under Section 1365. However, prior to the  
23 imposition or collection of an assessment under this subdivision,  
24 the board shall pass a resolution containing written findings as to  
25 the necessity of the extraordinary expense involved and why the  
26 expense was not or could not have been reasonably foreseen in the  
27 budgeting process, and the resolution shall be distributed to the  
28 members with the notice of assessment.

29 (c) Regular assessments imposed or collected to perform the  
30 obligations of an association under the governing documents or  
31 this title shall be exempt from execution by a judgment creditor of  
32 the association only to the extent necessary for the association to  
33 perform essential services, such as paying for utilities and  
34 insurance. In determining the appropriateness of an exemption, a  
35 court shall ensure that only essential services are protected under  
36 this subdivision.

37 This exemption shall not apply to any consensual pledges, liens,  
38 or encumbrances that have been approved by the owners of an  
39 association, constituting a quorum, casting a majority of the votes





1 at a meeting or election of the association, or to any state tax lien,  
2 or to any lien for labor or materials supplied to the common area.

3 (d) The association shall provide notice by first-class mail to  
4 the owners of the separate interests of any increase in the regular  
5 or special assessments of the association, not less than 30 nor more  
6 than 60 days prior to the increased assessment becoming due,  
7 unless the declaration provides a longer time period, in which case  
8 the longer time period shall apply.

9 (e) Regular and special assessments levied pursuant to the  
10 governing documents are delinquent 15 days after they become  
11 due. If an assessment is delinquent the association may recover all  
12 of the following:

13 (1) Reasonable costs incurred in collecting the delinquent  
14 assessment, including reasonable attorney's fees.

15 (2) A late charge not exceeding 10 percent of the delinquent  
16 assessment or ten dollars (\$10), whichever is greater, unless the  
17 declaration specifies a late charge in a smaller amount, in which  
18 case any late charge imposed shall not exceed the amount specified  
19 in the declaration.

20 (3) Interest on all sums imposed in accordance with this  
21 section, including the delinquent assessments, reasonable fees and  
22 costs of collection, and reasonable attorney's fees, at an annual  
23 interest rate not to exceed 12 percent, commencing 30 days after  
24 the assessment becomes due.

25 (f) Associations are hereby exempted from interest-rate  
26 limitations imposed by Article XV of the California Constitution,  
27 subject to the limitations of this section.

28 SEC. 5. Section 1366.3 of the Civil Code is amended to read:

29 1366.3. (a) The exception for disputes related to association  
30 assessments in subdivision (b) of Section 1354 shall not apply if,  
31 in a dispute between the owner of a separate interest and the  
32 association regarding the assessments imposed by the association,  
33 the owner of the separate interest chooses to pay in full to the  
34 association all of the charges listed in paragraphs (1) to (4),  
35 inclusive, and states by written notice that the amount is paid under  
36 protest, and the written notice is mailed by certified mail not more  
37 than 30 days from the recording of a notice of delinquent  
38 assessment in accordance with Section 1367; and in those  
39 instances, the association shall inform the owner that the owner  
40 may resolve the dispute through alternative dispute resolution as

1 set forth in Section 1354, civil action, and any other procedures to  
2 resolve the dispute that may be available through the association.

3 (1) The amount of the assessment in dispute.

4 (2) Late charges.

5 (3) Interest.

6 (4) All reasonable fees and costs associated with the  
7 preparation and filing of a notice of delinquent assessment,  
8 including all mailing costs, and including reasonable attorney's  
9 fees not to exceed four hundred twenty-five dollars (\$425).

10 ~~(b) An owner of a separate interest may request and the~~  
11 ~~association shall hold a hearing to consider any amounts~~  
12 ~~constituting the debt, as set forth in subdivision (a), which are in~~  
13 ~~dispute. The hearing shall be conducted prior to the filing of a lien~~  
14 ~~by the association. The hearing may also include, at the request of~~  
15 ~~the owner of a separate interest, consideration of establishing a~~  
16 ~~payment plan for purposes of paying delinquent assessments and~~  
17 ~~any other amounts which may be in dispute.~~

18 ~~(e)~~ The right of any owner of a separate interest to utilize  
19 alternative dispute resolution under this section may not be  
20 exercised more than two times in any single calendar year, and not  
21 more than three times within any five calendar years. Nothing  
22 within this section shall preclude any owner of a separate interest  
23 and the association, upon mutual agreement, from entering into  
24 alternative dispute resolution for a number of times in excess of the  
25 limits set forth in this section. The owner of a separate interest may  
26 request and be awarded through alternative dispute resolution  
27 reasonable interest to be paid by the association on the total amount  
28 paid under paragraphs (1) to (4), inclusive, of subdivision (a), if  
29 it is determined through alternative dispute resolution that the  
30 assessment levied by the association was not correctly levied.

31 ~~SEC. 6. Section 1367 of the Civil Code is amended to read:~~

32 ~~1367.~~

33 *SEC. 7. Section 1367 of the Civil Code is amended to read:*

34 1367. (a) A regular or special assessment and any late  
35 charges, reasonable costs of collection, and interest, as assessed in  
36 accordance with Section 1366, shall be a debt of the owner of the  
37 separate interest at the time the assessment or other sums are  
38 levied. Before an association may place a lien upon the separate  
39 interest of an owner to collect a debt which is past due under this  
40 subdivision, the association shall notify the owner in writing by

1 certified mail of the fee and penalty procedures of the association,  
 2 provide an itemized statement of the charges owed by the owner,  
 3 including items on the statement which indicate the principal  
 4 owed, any late charges and the method of calculation, any  
 5 attorney's fees, and the collection practices used by the  
 6 association, including the right of the association to the reasonable  
 7 costs of collection. In addition, any payments toward such a debt  
 8 shall first be applied to the principal owed, and only after the  
 9 principal owed is paid in full shall such payments be applied to  
 10 interest or collection expenses.

11 (b) The amount of the assessment, plus any costs of collection,  
 12 late charges, and interest assessed in accordance with Section  
 13 1366, shall be a lien on the owner's interest in the common interest  
 14 development from and after the time the association causes to be  
 15 recorded with the county recorder of the county in which the  
 16 separate interest is located, a notice of delinquent assessment,  
 17 which shall state the amount of the assessment and other sums  
 18 imposed in accordance with Section 1366, a legal description of  
 19 the owner's interest in the common interest development against  
 20 which the assessment and other sums are levied, the name of the  
 21 record owner of the owner's interest in the common interest  
 22 development against which the lien is imposed, and, in order for  
 23 the lien to be enforced by nonjudicial foreclosure as provided in  
 24 subdivision (d) the name and address of the trustee authorized by  
 25 the association to enforce the lien by sale. The notice of delinquent  
 26 assessment shall be signed by the person designated in the  
 27 declaration or by the association for that purpose, or if no one is  
 28 designated, by the president of the association, and mailed in the  
 29 manner set forth in Section 2924b, to all record owners of the  
 30 owner's interest in the common interest development no later than  
 31 10 calendar days after recordation. Upon payment of the sums  
 32 specified in the notice of delinquent assessment, the association  
 33 shall cause to be recorded a further notice stating the satisfaction  
 34 and release of the lien thereof. A monetary penalty imposed by the  
 35 association as a means of reimbursing the association for costs  
 36 incurred by the association in the repair of damage to common  
 37 areas and facilities for which the member or the member's guests  
 38 or tenants were responsible may become a lien against the  
 39 member's separate interest enforceable by the sale of the interest  
 40 under Sections 2924, 2924b, and 2924c, provided the authority to

1 impose a lien is set forth in the governing documents. It is the intent  
2 of the Legislature not to contravene Section 2792.26 of Title 10 of  
3 the California Code of Regulations, as that section appeared on  
4 January 1, 1996, for associations of subdivisions that are being  
5 sold under authority of a subdivision public report, pursuant to Part  
6 2 (commencing with Section 11000) of Division 4 of the Business  
7 and Professions Code.

8 (c) Except as indicated in subdivision (b), a monetary penalty  
9 imposed by the association as a disciplinary measure for failure of  
10 a member to comply with the governing instruments, except for  
11 the late payments, may not be characterized nor treated in the  
12 governing instruments as an assessment which may become a lien  
13 against the member's subdivision interest enforceable by the sale  
14 of the interest under Sections 2924, 2924b, and 2924c.

15 (d) A lien created pursuant to subdivision (b) shall be prior to  
16 all other liens recorded subsequent to the notice of assessment,  
17 except that the declaration may provide for the subordination  
18 thereof to any other liens and encumbrances.

19 (e) After the expiration of 30 days following the recording of  
20 a lien created pursuant to subdivision (b), the lien may be enforced  
21 in any manner permitted by law, including sale by the court, sale  
22 by the trustee designated in the notice of delinquent assessment, or  
23 sale by a trustee substituted pursuant to Section 2934a. Any sale  
24 by the trustee shall be conducted in accordance with the provisions  
25 of Sections 2924, 2924b, and 2924c applicable to the exercise of  
26 powers of sale in mortgages and deeds of trusts.

27 (f) Nothing in this section or in subdivision (a) of Section 726  
28 of the Code of Civil Procedure prohibits actions against the owner  
29 of a separate interest to recover sums for which a lien is created  
30 pursuant to this section or prohibits an association from taking a  
31 deed in lieu of foreclosure.

32 (g) This section only applies to liens recorded on or after  
33 January 1, 1986 *and prior to January 1, 2003*.

34 *SEC. 7. Section 1367.1 is added to the Civil Code, to read:*

35 *1367.1.* (a) A regular or special assessment and any late  
36 charges, reasonable fees and costs of collection, reasonable  
37 attorney's fees, if any, and interest, if any, and, if applicable, utility  
38 charges and premiums for insurance, as determined in accordance  
39 with Section 1366, shall be a debt of the owner of the separate  
40 interest at the time the assessment or other sums are levied. At least

1 30 days prior to placing a lien upon the separate interest of the  
2 owner of record to collect a debt ~~which~~ *that* is past due under this  
3 subdivision, the association shall notify the owner of record in  
4 writing by certified mail of the following:

5 ~~(1) The fee and collection procedures of the association.~~

6 *(1) A general description of the collection and lien enforcement*  
7 *procedures of the association and the method of calculation of the*  
8 *amount, the notice set forth in subparagraph (F) of paragraph (1)*  
9 *of subdivision (d) of Section 1365, and a statement that the owner*  
10 *of the separate interest has the right to inspect the association*  
11 *records, pursuant to Section 8333 of the Corporations Code.*

12 (2) An itemized statement of the charges owed by the owner,  
13 including items on the statement which indicate the amount of any  
14 delinquent assessments, the fees and reasonable costs of  
15 collection, *reasonable* attorney's fees, any late charges, and  
16 interest, if any, and, if applicable, the amount of unpaid utility  
17 charges and delinquent premiums for insurance.

18 ~~(3) The method of calculation.~~

19 ~~(4) The collection practices and lien procedures used by the~~  
20 ~~association, including the right of the association to obtain the~~  
21 ~~reasonable costs of the collection and lien procedures.~~

22 ~~(5) A statement describing the dispute resolution process of the~~  
23 ~~association, including when and how an owner can dispute the~~  
24 ~~costs, fees, charges, and interest, and the owner's right to inspect~~  
25 ~~the association records, pursuant to Section 8333 of the~~  
26 ~~Corporations Code.~~

27 ~~(6) A statement that the owner shall not be liable to pay the~~  
28 ~~charges, interest, and costs of collection, if it is determined the~~  
29 ~~principal was paid on time to the association.~~

30 *(4) The right to request a meeting with the board as provided*  
31 *by subdivision (c).*

32 (b) Any payments made by the owner of a separate interest  
33 toward the debt set forth, as required in subdivision (a), shall first  
34 be applied to the assessments owed, and, only after the assessments  
35 owed are paid in full shall the payments be applied to the fees and  
36 costs of collection, attorney's fees, late charges, or interest.

37 ~~(c) The owner of record may request a meeting of the board of~~  
38 ~~directors, which shall be held by the board, to discuss the disputed~~  
39 ~~assessments, charges, interest, and a payment plan. If within 15~~  
40 ~~days of receiving a notice that assessments are delinquent the~~

1 owner of record requests a meeting with the board of directors, the  
2 board shall hold an executive session pursuant to subdivision (b)  
3 of Section 1363.05 as soon as practicable to discuss any amounts  
4 constituting the debt, as provided in subdivision (a), which are in  
5 dispute or delinquent, and any payment plan proposed by the  
6 owner of record. The board is not required to meet with an owner  
7 pursuant to this subdivision more than twice in a two-year period.  
8 If the board agrees to a payment plan, it may record a lien prior  
9 to the implementation of the plan, if the authority for recording the  
10 lien is noticed in the plan, but the board shall enforce the lien only  
11 if the owner of the separate interest fails to comply with the plan.  
12 Any payment plan that the board agrees to shall provide for  
13 satisfaction of the debt within a specified time.

14 (d) The amount of the assessment, plus any costs of collection,  
15 late charges, and interest assessed in accordance with Section  
16 1366, shall be a lien on the owner's interest in the common interest  
17 development from and after the time the association causes to be  
18 recorded with the county recorder of the county in which the  
19 separate interest is located, a notice of delinquent assessment,  
20 which shall state the amount of the assessment and other sums  
21 imposed in accordance with Section 1366, a legal description of  
22 the owner's interest in the common interest development against  
23 which the assessment and other sums are levied, the name of the  
24 record owner of the owner's interest in the common interest  
25 development against which the lien is imposed. In order for the  
26 lien to be enforced by nonjudicial foreclosure as provided in  
27 subdivision (e), the notice of delinquent assessment shall state the  
28 name and address of the trustee authorized by the association to  
29 enforce the lien by sale. The notice of delinquent assessment shall  
30 be signed by the person designated in the declaration or by the  
31 association for that purpose, or if no one is designated, by the  
32 president of the association, and mailed in the manner set forth in  
33 Section 2924b, to all record owners of the owner's interest in the  
34 common interest development no later than 10 calendar days after  
35 recordation. The notice shall set forth that failure to pay  
36 assessments may result in the loss of the owner's separate interest.  
37 Upon payment of the sums specified in the notice of delinquent  
38 assessment, the association shall cause to be recorded a further  
39 notice stating the satisfaction and release of the lien thereof. A  
40 monetary ~~penalty~~ charge imposed by the association as a means of



1 reimbursing the association for costs incurred by the association  
2 in the repair of damage to common areas and facilities for which  
3 the member or the member's guests or tenants were responsible  
4 may become a lien against the member's separate interest  
5 enforceable by the sale of the interest under Sections 2924, 2924b,  
6 and 2924c, provided the authority to impose a lien is set forth in  
7 the governing documents. It is the intent of the Legislature not to  
8 contravene Section 2792.26 of Title 10 of the California Code of  
9 Regulations, as that section appeared on January 1, 1996, for  
10 associations of subdivisions that are being sold under authority of  
11 a subdivision public report, pursuant to Part 2 (commencing with  
12 Section 11000) of Division 4 of the Business and Professions  
13 Code.

14 (e) Except as indicated in subdivision ~~(b)~~ (d), a monetary  
15 penalty imposed by the association as a disciplinary measure for  
16 failure of a member to comply with the governing instruments,  
17 except for the late payments, may not be characterized nor treated  
18 in the governing instruments as an assessment~~which~~ that may  
19 become a lien against the member's subdivision interest  
20 enforceable by the sale of the interest under Sections 2924, 2924b,  
21 and 2924c.

22 (f) A lien created pursuant to subdivision ~~(b)~~ (d) shall be prior  
23 to all other liens recorded subsequent to the notice of assessment,  
24 except that the declaration may provide for the subordination  
25 thereof to any other liens and encumbrances.

26 (g) An association may not voluntarily assign or pledge the  
27 association's right to collect payments or assessments, fees for  
28 utility service, or premiums for common insurance coverage, or to  
29 enforce or foreclose a lien to a third party, except when the  
30 assignment or pledge is made to an institutional or licensed finance  
31 lender, as defined in Section 22009 of the Financial Code, as  
32 security for a loan obtained by the association. Subject to the  
33 limitations of this subdivision, after the expiration of 30 days  
34 following the recording of a lien created pursuant to subdivision  
35 ~~(b)~~ (d), the lien may be enforced in any manner permitted by law,  
36 including sale by the court, sale by the trustee designated in the  
37 notice of delinquent assessment, or sale by a trustee substituted  
38 pursuant to Section 2934a. Any sale by the trustee shall be  
39 conducted in accordance with the provisions of Sections 2924,  
40 2924b, and 2924c applicable to the exercise of powers of sale in



1 mortgages and deeds of trusts. The fees of a trustee may not exceed  
2 the amounts prescribed in Sections 2924c and 2924d.

3 (h) Nothing in this section or in subdivision (a) of Section 726  
4 of the Code of Civil Procedure prohibits actions against the owner  
5 of a separate interest to recover sums for which a lien is created  
6 pursuant to this section or prohibits an association from taking a  
7 deed in lieu of foreclosure.

8 (i) This section only applies to liens recorded on or after  
9 January 1, ~~1986~~ 2003.

